



Case Western Reserve Law Review

Volume 3 | Issue 2

1951

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Recommended Citation

Gordon E. Neuenschwander, *Negotiable Instruments Incomplete When Delivered*, 3 W. Res. L. Rev. 150 (1951)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol3/iss2/6>

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cutting retailers or to the distributors who supply them. A weapon not needed during the fair trade era comes to the fore again.

Overruling of the *Colgate* doctrine has been suggested,⁴⁶ and some attorneys think that the present Supreme Court may well overturn it.⁴⁷ The cases before and after the *Colgate* decision show the federal courts' hostility to price maintenance agreements and to the various other methods used by manufacturers to maintain suggested prices. It must be remembered also that the *Colgate* case, while protecting the right to refuse to sell, carried with it an important qualification of the right, namely, "in the absence of any purpose to create or maintain a monopoly."⁴⁸ The courts may interpret this phrase so broadly as to negate the effect of the decision without actually overruling the case. How broadly this qualification will be interpreted is a matter not foreseeable at the present time. The whole price maintenance phase of trade regulation is one which will bear close watching for further developments.

EARL C. SHEEHAN

Negotiable Instruments Incomplete When Delivered

THE DELIVERY of negotiable instruments intentionally left incomplete figures prominently in everyday business transactions. It is remarkable that the practice is still so widespread in view of the background of law which certainly tends to discourage it. Yet, for reasons of immediate convenience, unequal bargaining power, or carelessness, people do sign their names to negotiable paper on which certain important items such as the amount, the date of payment, or the name of the payee are left blank.

At the law merchant, if a maker or drawer delivered a negotiable instrument leaving blank any essential element, such as the date, the amount, or the name of the payee, the law thereby conferred an implied authority to fill up the blank upon anyone into whose hands the instrument lawfully came.¹

According to the general view, where a blank was left for either the date or the amount, this implied authority at law extended no further than to an insertion of the true date or the proper amount as determined by

salers or manufacturers for selling to price-cutting retailers, and agreements to coerce manufacturers or wholesalers to enter fair trade contracts. 2 CCH Trade Reg. Rep. (9th Ed.) Sec. 7076 (1951).

⁴⁶ Comment, *Refusal to Sell and Public Control of Competition*, 58 YALE L. J. 1121 (1949).

⁴⁷ Investor's Reader, June 20, 1951, p. 4.

⁴⁸ 250 U.S. 300, 307, 39 Sup.Ct. 465, 468 (1919). Cf. *United States v. Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn. 1945).

authority expressly given by the signer or implied from the facts.² But when the instrument contained a blank for the payee's name, the holder could fill in either his own name,³ the name of his transferee,⁴ or, where the instrument was payable to order only, the name of his indorser,⁵ regardless of the authority expressly or impliedly given by the signer, provided that the holder had no actual notice of such authority.⁶

If a blank was not filled in accordance with the authority expressly or impliedly given by the signer, the completed instrument was rendered invalid as to any persons having notice that it was not so filled.⁷ A holder receiving the completed instrument without notice took free of any defense of lack of authority which the signer could assert against a person who filled the blanks without authority.⁸

With the Uniform Negotiable Instruments Law in effect in all 48 states,⁹ practically all problems arising in the United States from negotiable

¹ *Bank of Pittsburgh v. Neal*, 22 How. (63 U.S.) 96 (1859); *Goodman v. Simonds*, 20 How. (61 U.S.) 343 (1857); *Roberts v. Adams*, 8 Port. (Ala.) 297 (1838); *Canon v. Grigsby*, 116 Ill. 151, 5 N.E. 362 (1886); *Market & Fulton Nat. Bank v. Sargent*, 85 Me. 349, 27 Atl. 192 (1893); *Van Etta v. Evenson*, 28 Wis. 33 (1871). *Contra*, *English v. Breneman*, 9 Ark. 122 (1848).

"But the authority implied from the existence of the blanks would not authorize the person intrusted with the instrument to vary or alter the material terms of the instrument by erasing what is written or printed, nor to make any addition to the terms of the note"; *Angle v. North-western Mutual Life Ins. Co.*, 92 U.S. 330 (1875); *Accord*, *Dumbrow v. Gelb*, 72 Misc. 400, 130 N.Y.Supp. 182 (1911) (authority to add words, "with interest," is not to be presumed.)

² *Overton v. Matthews*, 35 Ark. 146 (1879) (insertion of any date other than true date avoids note as between makers and holder who inserts, but not as between makers and purchaser for value before maturity without notice of improper insertion); *Bank of Houston v. Day*, 145 Mo. App. 410, 122 S.W. 756 (1909) (date); *Chestnut v. Chestnut*, 104 Va. 539, 52 S.E. 348 (1905) (amount).

³ *White v. Vermont & M. R. Co.*, 21 How. (62 U.S.) 575 (1858) (negotiable bonds); *Schooler v. Tilden*, 71 Mo. 580 (1880); *Thompson v. Rathbun*, 18 Ore. 202, 22 Pac. 837 (1889); *Frank & Adler v. Lilienfeld*, 74 Va. (33 Gratt.) 377 (1880).

⁴ *Abram v. Greer*, 88 Atl. 884 (R.I. 1913); see *Simpson v. First Nat. Bank*, 94 Ore. 147, 155-156, 185 Pac. 913, 916 (1919).

⁵ *First Nat. Bank of Decatur v. Johnston*, 97 Ala. 655, 11 So. 690 (1892); *Armstrong v. Harshman*, 61 Ind. 52 (1878); *Frerwell v. Carter*, 78 S.C. 531, 59 S.E. 639 (1907).

⁶ *White v. Vermont & M. R. Co.*, 21 How. (62 U.S.) 575 (1858); *Sittig v. Birkesack*, 38 Md. 158 (1873); *Thompson v. Rathbun*, 18 Ore. 202, 22 Pac. 837 (1889); *Close v. Fields*, 2 Texas 232 (1847); see *Simpson v. First Nat. Bank*, 94 Ore. 147, 155-156, 185 Pac. 913, 916 (1919).

⁷ *Davidson v. Lanier*, 4 Wall. (71 U.S.) 447 (1867); *Goodman v. Simonds*, 20 How. (61 U.S.) 343 (1857); *Hatch v. Searles*, 2 Sm. & G. 147, 65 Eng. Rep. 342 (1854).

⁸ *Bank of Pittsburgh v. Neal*, 22 How. (63 U.S.) 96 (1859); *Hudson v. Hanson*, 75 Ill. 198 (1874); *Linick v. Nutting & Co.*, 140 App. Div. 265, 125 N.Y. Supp. 93 (1910); *Van Duzer v. Howe*, 21 N.Y. 531 (1860); *Fullerton v. Sturges*, 4 Ohio St. 529 (1855); *Bank of St. Clairsville v. Smith*, 5 Ohio 222 (1831).

instruments executed with blanks are now governed by the rules found in Section 14 of the Law.¹⁰ With certain modifications, this section attempts to codify the rules of the law merchant.

Section 14 provides:

Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount.

In a suit to recover upon an instrument originally containing blanks, the holder is aided by the first two sentences of Section 14, which create a presumption that the instrument was completed within authority expressly or impliedly given by the signer.¹¹

The prima facie authority granted to the person in possession of the instrument by Section 14 is similar to the implied authority conferred on a holder at the law merchant by the delivery of an instrument containing a blank.¹² This authority extends to any incomplete feature of the instru-

⁹ BEUTEL'S BRANNAN, NEGOTIABLE INSTRUMENTS LAW 122 (7th Ed. 1948). Almost all states have adopted § 14 with the identical language found in the Uniform Law. Some states have made changes in the wording, but they appear to be of minor importance.

¹⁰ A negotiable instrument delivered incomplete as to date, but which expresses a fixed period after date when payment is to be made, comes within the scope of § 13 which deals exclusively with undated negotiable instruments. However, § 14 is broad enough to include such matters and most cases refer to this section when dealing with such a case. Section 13 is discussed in *Bank of Houston v. Day*, 145 Mo. App. 410, 417, 122 S.W. 756, 758 (1909).

The proposed Uniform Commercial Code would bring some decided changes in the present law. See § 3—115 UNIFORM COMMERCIAL CODE, (Final Text Edition, Nov., 1951). The proposed code condenses and rewords § 14 of the Negotiable Instruments Law, omitting the second sentence for the stated reason that it has utility only in connection with the old practice of signing blank paper to be filled in later as an acceptance. It eliminates the rule embodied in §§ 13 and 15 of the Negotiable Instruments Law. (Section 15 is further considered *infra* at note 12).

¹¹ *In re Gillett's Estate*, 73 Cal. App. 2d 588, 166 P. 2d 870 (1946); *Linthicum v. Bagby*, 131 Md. 644, 102 Atl. 997 (1917); *Equitable Trust Co. v. Lyons*, 72 Misc. 49, 129 N.Y. Supp. 79 (1911). See BRITTON, BILLS AND NOTES 329, 330 (1943).

¹² See *supra* p. 150.

The use of the term "prima facie authority" by the codifiers tends to clarify the type of authority granted since the term "implied authority" varies in scope and meaning.

The person in possession to whom prima facie authority is granted by § 14 is qualified by § 15 to one who gained possession of the instrument only after an initial delivery of the incomplete instrument by the signer. Thus, anyone, such as a thief or finder, or person purchasing from them, in possession of an undelivered incomplete instrument cannot recover upon the instrument from a signer who signed before delivery.

ment.¹³ The second sentence of the section should allow a person to write a complete instrument above a signature of the signer if the signer intended that a negotiable instrument be written above it.¹⁴

The third sentence of Section 14 provides:

In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time.

The presumption that acts of completion were done in accordance with the authority given by the signer will remain until rebutted.¹⁵ After the holder puts the completed instrument in evidence and rests his *prima facie* case, the signer has the burden of going forward.¹⁶

A breach of either express or implied authority in completing an instrument bars recovery upon it against all parties prior to completion by any person who is not a holder in due course.¹⁷ Evidence of express instructions by the signer which were violated or of facts giving rise to an implied authority which was exceeded when an instrument was completed, rebuts the presumption of correct completion.¹⁸ Implied authority may be established, for example, by evidence of prior dealings or custom.¹⁹

¹³ *White v. White*, 39 Cal. App. 2d 57, 102 P.2d 432 (1940) (date); *Canon v. Grigsby*, 116 Ill. 151, 5 N.E. 362 (1886) (place of payment); *Marion Sav. Bank v. Leahy*, 200 Iowa 220, 204 N.W. 456 (1925) (payee); *Windahl v. Vanderwilt*, 200 Iowa 816, 203 N.W. 252 (1925) (amount); *Clark v. Layman*, 144 Kan. 711, 62 P. 2d 897 (1936) (date); *Simpson v. First Nat. Bank*, 94 Ore. 147, 185 Pac. 913 (1919) (payee); see *Linthicum v. Bagby*, 131 Md. 644, 648, 102 Atl. 997, 998 (1917) (authority under § 14 extends to every incomplete feature).

The words "material particular" in § 14 are not intended to include only those particulars necessary to the creation of a negotiable instrument. *Johnston v. Hoover*, 139 Iowa 143, 117 N.W. 277 (1908).

¹⁴ Such a construction is in accord with the rule of the law merchant that where a man signs his name on a blank piece of paper for the purpose of giving a letter of credit, his signature authorizes the holder to write a complete instrument above the signature. *Violett v. Patton*, 5 Cranch (9 U.S.) 140 (1809); *Herbert v. Huie*, 1 Ala. 18 (1840); see *Ayres v. Harnes*, 1 Ohio 368, 372 (1824) (stating that this same rule applied to a simple promissory note, but holding that it did not apply to a bond under seal).

¹⁵ *Windahl v. Vanderwilt*, 200 Iowa 816, 203 N.W. 252 (1925); *Brown v. Thomas*, 120 Va. 763, 92 S.E. 977 (1917).

¹⁶ *In re Gillett's Estate*, 73 Cal. App. 2d 588, 166 P. 2d 870 (1946); *Windahl v. Vanderwilt*, 200 Iowa 816, 203 N.W. 252 (1925); *Brown v. Thomas*, 120 Va. 763, 92 S.E. 977 (1917).

¹⁷ *Hartington Nat. Bank v. Breslin*, 88 Neb. 47, 128 N.W. 659 (1910); *Cinema Circuit Corp. v. Merrill Amusement Corp.*, 121 N.J.L. 216, 2 A.2d 43 (1938) (authority to fill blanks was revoked before filling); *Burke v. Jenkins*, 128 Ohio St. 86, 190 N.E. 238 (1934).

¹⁸ *Schuster v. Bowen*, 97 Cal. App.2d 803, 218 P.2d 839 (1950); *Tremont Trust Co. v. Noyes*, 246 Mass. 197, 141 N.E. 93 (1923); *Equitable Trust Co. of New York v. Lyons*, 72 Misc. 49, 129 N.Y. Supp. 79 (1911).

The problem has frequently arisen whether a sum placed by the signer in the margin of an instrument²⁰ containing a blank for the amount can limit the amount which the holder can effectively fill in. Since marginal data stating the amount can be a form of express authority on the face of the instrument, the holder is put upon inquiry as to whether there may be limited authority to fill up the blank for the amount.²¹ No case has been found where the holder has taken an instrument after completion which contained a sum in the margin differing from that found in the body, and the holder had no knowledge of who placed the data on the instrument.²²

In order to rebut the presumption of correct completion, courts have held that the defendant-signer must bear the "burden of proof" in the sense of "risk of non-persuasion" that completion was not done in accordance with the authority given.²³ Testimony that the instrument was not completed in accordance with authority given is properly admissible under a general denial since it tends to disprove the holder's contention that he holds an obligation from the signer.²⁴ The question whether the instrument was completed in an unauthorized manner is normally a question of fact for the jury.²⁵

Once the presumption of correct completion is rebutted, the holder cannot recover upon the instrument unless he offers further evidence

²⁰ *Schuster v. Bowen*, 97 Cal. App.2d 803, 218 P.2d 839 (1950) (evidence of prior dealings held admissible to show limited authority to fill a blank for the amount in a check)

²¹ Normally, the sum in the margin consists of figures placed in the upper left part of the paper, immediately above the wording of the instrument.

²² *Hall v. Bank of Commonwealth*, 35 Ky. 179, 5 Dana 258 (1837); *Henderson v. Bondurant*, 39 Mo. 369 (1867); *Schryver v. Hawkes*, 22 Ohio St. 308 (1872); *Kimball v. Costa*, 76 Vt. 289, 56 Atl. 1009 (1904); *Chestnut v. Chestnut*, 104 Va. 539, 52 S.E. 348 (1905).

²³ It seems that the holder should be put upon inquiry by the dissimilarity of the two sums — especially since a presumption exists that memoranda on an instrument were placed there contemporaneously with the execution of the instrument. *National Bank v. Feeney*, 12 S.D. 156, 80 N.W. 186 (1899); *Fletcher v. Blodgett*, 16 Vt. 26 (1844).

²⁴ *In re Gillett's Estate*, 73 Cal. App.2d 588, 166 P. 2d 870 (1946); *Windahl v. Vanderwilt*, 200 Iowa 816, 203 N.W. 252 (1925); *Madden v. Gaston*, 137 App. Div. 294, 121 N.Y. Supp. 951 (1910). The holding that the defendant-signer has the burden of proving that completion was done in excess of authority seems inconsistent since, in the normal case, a party need only produce some countervailing evidence in order to overcome a presumption — he need not rebut the presumption by a preponderance of the evidence. *Heinemann v. Heard*, 62 N.Y. 448 (1875); *Ginn v. Dolan*, 81 Ohio St. 121, 90 N.E. 141 (1909); *Klunk v. Hocking Valley R. Co.* 74 Ohio St. 125, 77 N.E. 752 (1906). See the excellent discussion of burden of proof in *First Nat. Bank v. Ford*, 30 Wyo. 110, 118-120, 216 Pac. 691, 693-694 (1923).

²⁵ *Bloom v. Horwitz*, 100 Misc. 687, 166 N.Y. Supp. 786 (1917)

²⁶ *Roberts v. Rider*, 255 Ky. 266, 73 S.W. 2d 17 (1934); *McComsey v. McGowan*, 325 Pa. 484, 190 Atl. 884 (1937).

either that blanks actually were filled " strictly in accordance with the authority given " ²⁶ or that the signer ratified an unauthorized act of completion. ²⁷

In order that an instrument containing blanks may be enforced, " it must be filled up within a reasonable time , " in the absence of proof of an express time limitation. ²⁸ Whether the blanks were filled within a reasonable time is a question of fact in each particular case. ²⁹ The standards set forth in Section 193 ³⁰ for determining a reasonable time should be applied to this problem.

Because the first part of Section 14 raises a presumption that the instrument was properly completed, it would seem that a presumption that the blanks were filled within a reasonable time should also exist. ³¹ Yet at least one court has held that there is no such presumption. ³²

The death of the signer raises a question as to the right of the surviving holder to fill in the incomplete instrument. Most courts agree that the authority to fill blanks is coupled with an interest and therefore is not revoked by the signer's death. ³³ However, there is authority that when the incomplete instrument is delivered as a gift, the blanks must be filled before the donor's death, which acts as a revocation. ³⁴

Under the rules of the law merchant, if a maker or drawer entrusted a note or bill complete except for the name of the payee to an agent with

²⁶ *Equitable Trust Co. of New York v. Lyons*, 72 Misc. 49, 129 N.Y. Supp. 79 (1911).

²⁷ *Windahl v. Vanderwilt*, 200 Iowa 816, 203 N.W. 252 (1925); *First Nat. Bank of Marengo v. Athey*, 188 Iowa 330, 174 N.W. 347 (1919).

²⁸ NEGOTIABLE INSTRUMENTS LAW, § 14 (third sentence).

²⁹ *White v. White*, 39 Cal. App.2d 57, 102 P.2d 432 (1940); *Brown v. Thomas*, 120 Va. 763, 92 S.E. 977 (1917). The following cases give examples of reasonable periods: *White v. White*, 39 Cal. App.2d 57, 102 P.2d 432 (1940) (14 years); *Finley v. Rose*, 189 Ky. 359, 224 S.W. 1059 (1920) (17 years); *In re Ferrara*, 109 N. J. Eq. 49, 156 Atl. 265 (1931) (14 months); *Brown v. Thomas*, 120 Va. 763, 92 S.E. 977 (1917) (2 years). The following cases give examples of unreasonable periods: *Griffin v. Mullins*, 21 S.W.2d 209 (Mo. App. 1929) (6½ months); *Columbia River Door Co. v. Timms*, 127 Ore. 227, 271 Pac. 607 (1928) (14 months); *Paschke v. Stoller*, 189 Wis. 348, 207 N.W. 704 (1926) (1 year).

³⁰ "In determining what is a 'reasonable time' or an 'unreasonable time,' regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case."

³¹ See BRITTON, *BILLS AND NOTES* 334 (1943).

³² *Madden v. Gaston*, 137 App. Div. 294, 121 N.Y. Supp. 951 (1910); see *Brown v. Thomas*, 120 Va. 763, 92 S.E. 977, 978 (1917).

³³ *Barnes' Executors v. Reynolds*, 5 Miss. 114 (1839); *In re Ferrara*, 109 N. J. Eq. 49, 156 Atl. 265 (1931); *Brown v. Thomas*, 120 Va. 763, 92 S.E. 977 (1917); see *Hatch v. Seales*, 2 Sm. & G. 147, 65 Eng. Rep. 342, 345 (1854).

³⁴ *In re Eshenbaugh's Estate*, 114 Pa. Super. 341, 174 Atl. 809 (1934).

instructions to take it to A, and if, instead of that, the agent delivered it to B, then B had authority implied at law to insert his name as payee if he took the instrument without actual notice of the limitation on the agent's authority.³⁵

This rule has been changed by Section 14, so that B would now have to fill up the blank for the payee's name " . . . strictly in accordance with the authority given " by the signer, before he or his transferee who is not a holder in due course could enforce the instrument.³⁶

Section 14 also changed the common law rule in the United States concerning the acquiring of an instrument issued with any other type of blank.³⁷ Under Section 14, a person who takes an instrument with blanks or even with knowledge that it originally contained blanks is put upon inquiry as to the extent of the authority given to fill the blanks.³⁸ It appears that the only safe method by which the holder can ascertain authority is to communicate with the signer.

The holder who takes an instrument containing blanks is not only put upon inquiry as to the authority given to complete the instrument, but he is also charged with notice of all other equities and defenses which could have been asserted against his transferor.³⁹

In an action upon an instrument which was originally delivered in incomplete form, a holder in due course recovers free from a defense of the signer that blanks were filled in violation of authority.⁴⁰ This rule is found in the last sentence of Section 14, which provides:

But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

³⁵ *Moody v. Threlkeld*, 13 Ga. 55 (1853); *Sittig v. Birkestack*, 38 Md. 158 (1873); *Thompson v. Rathbun*, 18 Ore. 202, 22 Pac. 837 (1889); *Close v. Fields*, 2 Texas 232 (1847).

³⁶ *Tower v. Stanley*, 220 Mass. 429, 107 N.E. 1010 (1915); *Simpson v. First Nat. Bank*, 94 Ore. 147, 185 Pac. 913 (1919); *Brown v. Thomas*, 120 Va. 763, 92 S.E. 977 (1917).

³⁷ For the common law, see *Angle v. North-western Mutual Life Ins. Co.*, 92 U.S. 330 (1875); *Thompson v. Bank of Chatsworth*, 30 Ga. App. 443, 118 S.E. 470 (1923); *Fullerton v. Sturges*, 4 Ohio St. 530 (1855).

³⁸ *Hannen v. People's State Bank*, 195 Ky. 58, 241 S.W. 355 (1922); *Bronson v. Stetson*, 252 Mich. 6, 232 N.W. 741 (1930); *Maurer v. Hahn*, 104 N.J.L. 254, 140 Atl. 273 (1928), *aff'd*, 105 N.J.L. 494, 145 Atl. 316 (1929); *Burke v. Jenkins*, 128 Ohio St. 86, 190 N.E. 238 (1934) (no recovery where agent of payee took delivery of note and agent filled in blank with payee's name); *Simpson v. First Nat. Bank*, 94 Ore. 147, 185 Pac. 913 (1919); *Cache Valley Comm'n. Co. v. Genter Sales Co.*, 63 Utah 574, 228 Pac. 203 (1924).

³⁹ *Tower v. Stanley*, 220 Mass. 429, 107 N.E. 1010 (1915); *Moore v. Vaughn*, 167 Miss. 758, 150 So. 372 (1933); *Columbia River Door Co. v. Timms*, 127 Ore. 227, 271 Pac. 607 (1928).

⁴⁰ *Johnston v. Hoover*, 139 Iowa 143, 117 N.W. 277 (1908); *State Bank v. Harford*,

A holder of an instrument which originally contained blanks who takes either before or contemporaneously with the act of completion cannot qualify as a holder in due course because Section 14 requires that the holder in due course take after completion. This proposition is affirmed in Section 52, which declares: "A holder in due course is a holder who has taken the instrument under the following condition: (1) that it is complete and regular upon its face" Further, even the knowledge that blanks existed at the time the instrument was originally delivered gives a holder constructive notice of the signer's instructions and precludes him from being a holder in due course.⁴¹

It should be noted that the last sentence of Section 14 refers only to one to whom the instrument has been negotiated as a holder in due course. The problem of whether one who does not receive an instrument, originally delivered with blanks, through a negotiation can recover upon the instrument as a holder in due course has caused some controversy.

In the leading case of *Vander Ploeg v. Van Zunk*,⁴² the Iowa Supreme Court held that the payee of a note, who took it from one to whom it was entrusted by the makers for the purpose of delivery to the payee to extinguish a debt of the makers, became the holder of the note through issuance but not through a negotiation;⁴³ therefore, the payee could not qualify and recover as a holder in due course.⁴⁴ An opposite view was expressed in the similar case of *Liberty Trust Co. v. Tilton*⁴⁵ in which it was held that a payee who purchased the instrument in complete form was a person to whom the instrument was negotiated and he may qualify as a holder in due course.⁴⁶ The real conflict between the two cases seems to rest upon the interpretation of the term "negotiation."⁴⁷ The Iowa court limited

116 Kan. 262, 226 Pac. 750 (1924); *Exchange Bank v. Robinson*, 185 Mo. App. 582, 172 S.W. 628 (1915); *Rutherford Nat. Bank v. Nichols*, 102 N.Y.S.2d 658 (Sup. Ct. 1951); *Battle v. Patsy Auto Sales*, 89 Ohio App. 231 (1951) (declaratory judgment).

⁴¹ *Hannen v. People's State Bank*, 195 Ky. 58, 241 S.W. 355 (1922); *Dumbrow v. Gelb*, 72 Misc. 400, 130 N.Y.Supp. 182 (1911). *Contra*: *First Discount Corp. v. Hatcher Auto Sales*, 156 Ohio St. 191 (1951).

⁴² 135 Iowa 350, 112 N.W. 807 (1907).

⁴³ The court indicated that if § 14 would provide for issuance to a holder in due course as well as negotiation, then the payee could have recovered.

⁴⁴ The holding rested largely on the authority of *Herdman v. Wheeler*, 1 K.B. 361 (1902), which was a similar case decided under § 20 of the Bills of Exchange Act, which is equivalent to § 14 of the Negotiable Instruments Law.

⁴⁵ 217 Mass. 462, 105 N.E. 605 (1914).

⁴⁶ The court reached its decision by a chain of reasoning which it felt was in conformity with the terms of the Negotiable Instruments Law and the law merchant. No distinction was drawn in the case between the terms "issue" and "negotiation."

⁴⁷ NEGOTIABLE INSTRUMENTS LAW, § 30 provides: "An instrument is negotiated when it is transferred from one person to another in such a manner as to constitute

the term to the transfer of an instrument from one holder to another while the Massachusetts court construed the term broadly by holding that an instrument is negotiated when any person, for value, becomes its owner.⁴⁸

In the same year that the *Vander Ploeg* case was decided, the English Court of Appeal held on a similar set of facts that the payee could recover as a holder in due course.⁴⁹ The court dismissed the negotiation issue by stating that the case need not be determined by reference to the section of the Bills of Exchange Act which is substantially the same as Section 14 of the Negotiable Instruments Law. Instead it decided the case on the basis of estoppel at common law. The defendant-maker was estopped from setting up the defense that the blank left for the amount was filled in excess of authority.

Both the "Iowa Rule" established in the *Vander Ploeg* case and the "Massachusetts Rule" established in the *Tilton* case have been followed by American courts.⁵⁰ At the same time, a number of American cases have been decided in accordance with the English view.⁵¹ The result reached by the cases following the English view seems the proper one, since the question of whether a holder who innocently takes a completed instrument, which originally contained blanks, not through a negotiation, may recover as a holder in due course is not covered by the Negotiable Instruments Law except to the extent that it is covered by Section 196, which makes the law merchant applicable "In any case not provided for in this act";⁵² and under the law merchant such a holder may recover as if he were a holder in due course.⁵³

There is a split of authority on whether recovery is allowed by one who is not a holder in due course upon an instrument where a blank for the amount was filled in excess of authority. The better-reasoned cases follow

the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the endorsement of the holder completed by delivery."

⁴⁸ From the second part of § 30 of the Negotiable Instruments Law, *supra* note 46, it would seem that the Iowa court's construction of "negotiation" is correct since the section requires an endorsement of the *holder* to negotiate an order instrument. The Massachusetts court "reasoned" that § 30 does not necessarily include the only means by which an order instrument can be negotiated. See *J. I. Case Threshing Mach. Co. v. Howth*, 116 Texas 434, 439-440, 293 S.W. 800, 801-802 (1927) for a discussion of the two opposing views.

⁴⁹ *Lloyd's Bank v. Cooke*, 1 K.B. 794 (1907). The decision in this case seems to have overruled *Herdman v. Wheeler*, 1 K.B. 261 (1902), *supra* note 43, even though the court said there was a distinction between the two cases.

⁵⁰ Cases following the "Iowa Rule" are: *Devoy & Khun Coal & Coke Co. v. Huttig*, 174 Iowa 357, 156 N.W. 412 (1916); *Southern Nat. Life Realty Corp. v. People's Bank*, 178 Ky. 80, 198 S.W. 543 (1917); *Bronson v. Stetson*, 252 Mich. 6, 232 N.W. 741 (1930); *J. I. Case Threshing Mach. Co. v. Howth*, 116 Texas 434, 293 S.W. 800 (1927). Cases following the "Massachusetts Rule" are: *Maurer v. Hahn*, 104 N.J.L. 254, 140 Atl. 273 (1928), *aff'd*, 105 N. J. L. 494, 145 Atl. 316

the rule that filling in an unauthorized amount invalidates the entire instrument, as does any unauthorized act of completion.⁵⁴ This rule seems consistent with the wording in Section 14 that, " . . . in order, however, that such instrument when completed may be enforced . . . it must be filled up strictly in accordance with the authority given . . . " Some cases, however, have allowed recovery on an instrument completed for an excessive amount to the extent of the amount authorized.⁵⁵

CONCLUSIONS

The Negotiable Instruments Law in regard to incomplete instruments may be summarized thus: The holder has *prima facie* authority to fill any blanks in an instrument which was delivered by the signer, or to write a complete instrument over a signature; but in order for him or one succeeding solely to his rights to recover on the completed instrument, the completion must be made within a reasonable time and in accordance with the authority expressly or impliedly given by the signer. One who can qualify as a holder in due course will be protected when he takes the instrument, regardless of the equities between prior parties.

It appears that the maker or drawer of an incomplete instrument benefitted from the enactment of Section 14. While the law merchant protected the signer from holders with actual notice that the authority he gave was exceeded, the Negotiable Instruments Law, in addition, protects the signer from those who take without notice and yet cannot qualify as holders in due course.

Financial institutions and individuals must keep a constant guard when deciding whether to purchase an instrument (usually a note) in which the prospective purchaser is already named as payee from a third person repre-

(1929); *American Nat. Bank v. Kerley*, 109 Ore. 155, 220 Pac. 116 (1923); *Johnston v. Knipe*, 260 Pa. 504, 105 Atl. 705 (1918).

⁵⁴ *Roberts v. Rider*, 255 Ky. 266, 73 S.W. 2d 17 (1934); *Bank of Commerce & Savings v. Randell*, 107 Neb. 332, 186 N.W. 70 (1921); *Ladd & Tilton Bank v. Small*, 126 Wash. 8, 216 Pac. 862 (1923).

⁵⁵ "In any case not provided for in this act the rules of the law merchant shall govern."

⁵⁶ *Moody v. Threlkeld*, 13 Ga. 55 (1853); *Young v. Ward*, 21 Ill. 223 (1859); *Thompson v. Rathbun*, 18 Ore. 202, 22 Pac. 837 (1889); *Johnson Harvester Co. v. McLean*, 57 Wis. 258, 15 N.W. 177 (1883); *Russel v. Langstaffe*, 2 Dougl. 514, 99 Eng. Rep. 328 (1780). See Henning, *The Uniform Negotiable Instruments Law. Is It Producing Uniformity and Certainty in the Law Merchant?* 59 U. OF PA. L. REV. 471, 481 (1911).

⁵⁷ *Stout v. Eastern Rock Island Plow Co.* 202 Ind. 517, 176 N.E. 844 (1931); *Ogden v. Pope*, 44 N.Y.S.R. 646, 18 N.Y. Supp. 140 (1892). See Note, 75 A.L.R. 1390 (1931).

⁵⁸ *Hannen v. People's State Bank*, 195 Ky. 58, 241 S.W. 355 (1922); *Rodgers v. Baker*, 136 App. Div. 851, 122 N.Y. Supp. 91 (1910). See Note, 75 A.L.R. 1390 (1931).